

Formal Action #6008

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,

Plaintiff,

v.

NEW BEGINNING CREDIT

ASSOCIATION, INC., a Tennessee

corporation, CREDIT ALLIANCE, INC., a

Tennessee corporation, CREDIT

CONNECTION, Inc., a Tennessee

corporation, all doing business

as NEW BEGINNING FINANCIAL

ALLIANCE, and FRANK ANDRE

WILLIAM IAQUINTA, individually,

Defendants.

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Charles W. Burson, Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (the "Division"), having reason to believe that the Defendants named herein have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et. seq.* (the "Act"), including the Tennessee Credit Business Services Act, Tenn. Code Ann. § 47-18-1001, *et seq.* , and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County, pursuant to the provisions of Tenn. Code Ann. § 47-18-108(a)(3), because it is a county in which Defendants have conducted business. Further, the Defendants have been provided with notice in excess of the ten (10) day requirement set forth in Tenn. Code Ann. § 47-18-101(a)(2) (An Affidavit and Verification of Mark Williams, Director, Division of Consumer Affairs, Department of Commerce and Insurance, is attached hereto as Exhibit A.)

II. PARTIES

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by Charles W. Burson, the Attorney General and Reporter, on behalf of and at the request of the Division. (See Exhibit A.)

3. Corporate Defendants New Beginnings Credit Association, Inc., Credit Alliance, Inc., and The Credit Connection, Inc. are Tennessee corporations. Its principle place of business is 1102 Kermit Drive, Suite #100, Nashville, Tennessee 37217. The corporate defendants have also done business under the following name: New Beginning Financial Alliance. Individual Defendant Frank Andre William Iaquinta

is the president of the Corporate Defendant.

III. FACTUAL ALLEGATIONS

4. Defendants are in the business of promoting credit "re-establishment", improvement or repair services to consumers across the United States. Defendants' business was founded in approximately 1992 in Nashville, Tennessee.
5. Defendants are a credit services business pursuant to Tenn. Code Ann. § 47-18-1002(5)(A). Basically, Defendants offer to assist consumers in re-establishing or improving their credit by helping them obtain credit cards, and other credit accounts. Additionally, Defendants' seminar includes educational information designed to assist a consumer in "improving" or "re-establishing" credit. Corporate Defendant New Beginning Credit Association, Inc. currently has in place the credit services business bond required by Tenn. Code Ann. § 47-18-1011. Defendants' bond previously lapsed for approximately a 6 month period during their operation as a credit service business within the State of Tennessee.
6. Defendants promote their programs through advertisements placed in newspapers and television and targeted to consumers. These advertisements generally list a telephone number for consumers to call to apply for the credit or obtain additional information. Attached as Exhibit B are true and exact copies of representative advertisements used by the Defendants to promote their "services". For example, one of the advertisements says:

RE-ESTABLISH

YOUR CREDIT

WITH YOUR VERY OWN VISA®

Regardless of Past Credit History

Issued Through Ocean Independent Bank,

Ocean NJ Member FDIC

(PICTURE OF VISA LOGO)

18.9 ANNUAL PERCENTAGE RATE

u NO APPLICATION OR PROCESSING FEESu

FOR MORE INFORMATION AT NO OBLIGATION

M'BORO RD. RIVERGATE CLARKSVILLE

AREA AREA AREA

615-368-9764 615-865-0112 615-551-4078

The Credit Connection is an Agent of Ocean Independent Bank,

Ocean, New Jersey

VISA is a Registered Trademark of VISA International

Service Association

NEW BEGINNING

CREDIT

ASSOCIATION, INC.

ü SPONSORSHIP FOR A MAJOR CREDIT CARD

ü GUARANTEED \$2,500.00 CREDIT LIMIT

ü GUARANTEED ISSUE FAMILY DENTAL CREDIT CARD

ALSO USED AT AREA K-MARTS FOR YOUR PRESCRIPTION NEEDS.

ü GROCERY COUPONS OF YOUR CHOICE WITH NO

EXPIRATION DATES.

ü UP TO 40% CAR RENTAL DISCOUNTS

ü UP TO 5 DIFFERENT WAYS OF REPORTING YOUR

TIMELY PAYMENTS TO THE MAJOR CREDIT

BUREAUS...

REGARDLESS OF YOUR PAST CREDIT

HISTORY!

CALL NOW FOR QUICK (3-MINUTES) PRE-

APPROVAL!

(Telephone numbers repeated)

7. Once consumers have contacted the Defendants, telemarketers promote the Defendants' "services" to consumers on the telephone or by encouraging consumers to participate in a sales meeting.
8. Defendants promote their program across the United States. Defendants have promoted their "services" in at least the states of Kentucky, Mississippi, New Jersey, Missouri, Ohio, Tennessee, Nevada and Louisiana.
9. Defendants have advertised in Nashville, Tennessee and across the State of Tennessee on television, in the Tennessean and Nashville Banner newspapers and possibly other publications in the State of Tennessee and throughout the country. Additionally, Defendants directly mailed solicitations to consumers or placed solicitations on the consumers' automobiles. Attached as Exhibit C is a true and exact copy of such direct mail solicitations. All consumers regardless of the inducement method are instructed to call Defendants' telephone numbers.
10. When a consumer calls the telephone number in response to the promotional material, the consumer's call is answered at the Defendants' offices on Kermit Drive in Nashville, Tennessee by Defendants' telemarketers. Those telemarketers, who are employees of the Defendants, are provided a script which they are required to follow. This script requires the telemarketer to determine whether the consumer "initially qualifies" for a credit card. In order to initially qualify, a consumer must be employed for a required length of time, earn a pre-determined minimum amount per year and have never filed a Chapter 13 bankruptcy. As is readily observable from the attached Exhibits, none of these conditions or restrictions on receiving the promoted credit card are in the advertisements used to lure the consumers to call the Defendants' telephone number.
11. After the consumer is "pre-qualified", the telemarketer, under Defendants' instructions, arranges for the consumer to come in and meet with a "bank representative" to present proof of employment and income. Defendants' telemarketers imply to consumers that it will not be a lengthy presentation attended by a large group of people and where a substantial investment of monies from the consumer will be requested, even though that is exactly what takes place. The sales representative is not with a "bank",

however, but with the Defendants' company. This system of deception is encouraged by Defendants who pay commissions to the telemarketer based on the number of consumers who attend a sales presentations.

In fact, according to the sworn testimony of a former employee, the telemarketers regularly deceive, mislead and lie to consumers to secure their attendance at the presentations in order to earn bonus commissions. In addition to offering commissions, Defendants encourage their telemarketers to strictly follow the prepared script by implying that the Attorney General's Office had approved, reviewed or consented to the script and that problems could arise if the employees deviated from it in any way. The Tennessee Attorney General's Office has not reviewed, approved or consented to any script and in fact, the Attorney General's office does not approve scripts, advertisements or sales plans for any company.

12. Many consumers ask the telemarketers about the costs associated with obtaining the advertised credit card when they respond to Defendants' advertisements. Defendants' telemarketers are specifically instructed by supervisors employed and trained by Defendants not to inform consumers of the costs associated with obtaining the VISA credit card promoted in Defendants' advertisement during the initial telemarketing call but to arrange for consumers to meet with a sales representative. Many of Defendants' telemarketing representatives are well aware that a consumer must spend in excess of one thousand dollars to obtain the credit card. Once the consumer arranges a date and time to meet with a sales representative, they are given a confirmation number to give to the sales representative. This number is actually an identification number for one of the Defendants' telemarketers and is given so that the telemarketer will receive a commission for each person who attends the sales presentation.

13. At the sales meeting with Defendants' representatives, each consumer is solicited to sign an "ASSOCIATION MEMBERSHIP AGREEMENT" to become a member of the "Association". Attached as Exhibit D is a sample of the membership agreement. Upon information and belief, in order to participate as a member, consumers must currently pay \$1,139.00 in fees in the first 24 months of membership followed by a third year of \$49.95. The amount of the association membership has varied over the years of Defendants' business operations.

14. Upon information and belief, consumers frequently finance the "membership association" fee through the Defendants at an annual percentage rate of 18.9%. The monthly payments for the membership fees are normally collected through checks or money orders.

15. Defendants' sales presentation is actually a group meeting with a number of consumers in attendance. The sales presentation lasts approximately 1 hour. There are no bank representatives or financial institutions authorized to issue credit cards in attendance at these meeting. Defendants' sales representatives offer testimonials about how Defendants' program helped them "re-establish" credit and promote several goods or services the consumer will allegedly receive. Upon information and belief, some or all of Defendants' sales representatives have never participated in Defendants' program and their "testimonials" are fake. Additionally, during the presentation, the Defendants promise consumers an unsecured Visa credit card with a \$2,500.00 credit line. However, some consumers never receive an unsecured Visa credit card. Upon information and belief, in other cases, consumers are actually offered a VISA credit card with a much lower than promoted credit limit or a credit card which can only be used with a particular catalog, and which could have been obtained without paying a "membership fee" to

Defendants.

16. The Defendants' membership agreement has a short cancellation provision allowing only 72 hours for the consumer to change his or her mind. (This is the minimum permitted under the Tennessee Credit Services Business Act.) If a consumer decides not to participate after the cancellation period elapses and stops payment on the association fee, the Defendants cancel any credit card the consumer has received through the association. Because the Defendants' services are designed not to be delivered within the cancellation period, the consumer cannot make an informed decision as to whether to take advantage of the cancellation provisions, within 72 hours. Additionally, Defendants engage in aggressive in-house collection efforts to encourage consumers to fulfill their membership to the association obligations.

17. Further, Defendants turn consumers over to collection agencies for failure to make timely payments on their membership association fees even though Defendants have not delivered the promised goods and services.

18. As part of the "association" benefits, Defendants promote a multitude of services to consumers such as an unsecured VISA credit card, unsecured nationwide marketing home catalog credit card, mortgage lending discounts, unsecured checkbook credit lines, long distance telephone service, grocery coupon discounts, hotel-motel discounts, car rental discounts, discount travel services, car pricing purchasing and referral, moving discounts, emergency road service, credit card registration, flower/gift baskets discounts, mail order prescription drug discounts, vision plan discounts, medical supply discounts, hearing services discounts, relocation services discount, legal services, chiropractic services, dental services and veterinary services. See Exhibit E, a true and exact copy of the "NBCA ASSOCIATION BENEFIT GUIDE CREDIT BUILDING BENEFITS".

19. As part of Defendants' "reel them in tactics" at the sales presentation, the Defendants offer many of the services referenced in paragraph 18 "free" to consumers. For example, "one free in-office examination", "3 free 12 hour consultations with a network firm per year" have been offered. These services, however, are not "free" because the consumer must pay the membership association fees for multiple years which costs over a thousand dollars. Additionally, other restrictions, conditions and limitations may be imposed on the "free" offerings and Defendants fail to disclose the verifiable retail value of all "free" items offered.

20. Defendants tempt consumers who are in desperate need of credit with promises of "no up-front charges" or "no lump sum cash deposit required". Further, Defendants entire promotional campaign, from the advertisements to the telemarketing call, is designed to encourage consumers to believe that the Defendants offer a unique opportunity or a chance to a consumer with bad credit to obtain a credit card without a significant financial outlay. However, the Defendants program actually requires that consumers incur in excess of one thousand dollars to join the "association" to receive any benefits from Defendants' services.

21. The advertisements also indicate that a consumer can obtain "pre-approval" over the telephone in

"about 3 minutes". Yet, in fact, Defendants require that consumers undergo a lengthy 1 hour sales presentation program prior to beginning the application process for any "credit card". Upon information and belief, the "pre-approval" process conducted by Defendants is not connected with a bank or other financial institution that will actually issue credit cards to qualifying consumers.

22. Upon information and belief, Defendants' services do not "re-establish" credit or otherwise improve the credit history of a consumer. Upon information and belief, consumers could obtain the same or similar term credit cards without incurring the monetary obligation associated with joining the Defendants' "association".

23. According to a former employee of Defendants, employees of the Defendants actually encourage and affirmatively instruct their employees to falsify earnings and other credit information in order to assist consumers in qualifying for a mortgage. For example, an employee was asked when she received a call about a particular consumer's earnings, to confirm a salary of \$54,000.00 per year for that specific consumer as though she was an employer, when the credit information was completely fabricated.

24. Defendants fail to deliver the services and goods as promised to consumers in exchange for the exorbitant "membership association" fees.

25. Defendants have instructed their sales force how to mislead, deceive or otherwise engage in unfair activities designed to part consumers from their monies even though they are aware that the Defendants will not deliver the goods and services promised to the consumers.

26. On information and belief, Defendant Iaquina has personally walked the floors around the telemarketers' booths and is aware of the script used to promote the "re-establishment" of credit to consumers. Upon information and belief, Iaquina is aware of the misleading, deceptive, unfair and illegal scheme described herein. Upon information and belief, Defendant Iaquina personally approved the promotional offering and approved the sales promotional plan.

27. As a result of the various violations of the Act as alleged herein, consumers and/or persons, the exact number of whom is presently unknown to the State, may have and/or have suffered ascertainable monetary losses.

IV. VIOLATIONS OF THE LAW

28. Defendants' activities of offering for sale a credit re-establishment services or other credit services such as an unsecured credit card in this State constitutes "trade" or "commerce" and the offering of or providing of "goods" as defined in Tenn. Code Ann. § 47-18-103(5) and (9).

29. Consumers who purchase credit "re-establishment" services or other credit card services are "consumers" as defined in Tenn. Code Ann. § 47-18-103(2) which defines "consumer", in pertinent part, as "any person who seeks or acquires by purchase . . . any goods, services. . ." Corporate Defendant New

Beginnings Credit Association, Inc. is a "credit services business" as defined in Tenn. Code Ann. §47-18-1002(5)(A):

"Credit services business" means any person who with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform any of the following services in return for the payment of money or other valuable consideration: (i) Improving a consumer's credit record, history, or rating; (ii) Obtaining an extension of credit for a consumer; or (iii) Providing advice or assistance to a consumer with regard to either (i) or (ii) of this subdivision (5)(A).

(B) "Credit services business" does not include:

(i) The making, arranging, or negotiating for a loan or extension of credit under the laws of this state or the United States; (ii) Any bank, trust company, savings bank, or savings institution whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or any credit union organized and chartered under the laws of this state or the United States; (iii) Any nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)); (iv) Any person licensed as a real estate broker by this state where the person is acting within the course and scope of that license; (v) Any person licensed to practice law in this state where the person renders services within the course and scope of that person's practice as a lawyer; (vi) Any broker-dealer registered with the securities and exchange commission or the commodity futures trading commission where the broker-dealer is acting within the course and scope of that regulation; or (vii) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681t)."

30 All of the acts and practices engaged in and employed by the Defendants as alleged herein are "unfair or deceptive acts or practices affecting the conduct of any trade or commerce" in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a).

31 Each and every violation alleged herein engaged in by the Defendants as recited above constitutes a separate violation of the Tennessee Consumer Protection Act and each is punishable by a civil penalty of not more than one thousand dollars (\$1,000.00) as provided by Tenn. Code Ann. § 47-18-108(b).

32. The Defendants' conduct violates the stated purpose of the Tennessee Consumer Protection Act stated at Tenn. Code Ann. § 47-18-102 which provides, in pertinent part:

The provisions of this part shall be liberally construed to promote the following practices:

(2) To protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in part or wholly within this state;

(4) To declare and to provide for civil legal means for maintaining ethical standards of dealing between persons engaged in business and the consumer public to the end that good faith dealings between buyers and sellers at all levels of commerce be had in this state....

33. The Defendants have violated Tenn. Code Ann. § 47-18-104(b)(27), which prohibits engaging in any act or practice which is deceptive to the consumer or any other person. The Defendants' conduct which violates this part includes but is not limited to:

- (A) Misrepresenting to consumers that the consumer will be meeting with a representative of a bank when in fact it is merely an employee of Defendants;
- (B) Misrepresenting to consumers that the consumer will be having an individual meeting with a bank representative when in fact it is a group sales presentation with Defendants' employees;
- (C) Misrepresenting to consumers that Defendants' employees, the telemarketer is unaware of the costs and fees associated with obtaining the credit card when Defendants' employees are aware or can readily discover that in order to receive the credit card consumers will have to pay excess of \$1,000.00
- (D) Misrepresenting to consumers that the consumer can be pre-approved for a credit card in 3 minutes when Defendants know that all that will occur in the 3 minute time period is that they will be signed up to attend a 1 hour sales presentation;
- (E) Failing to notify consumers that they can obtain a credit card without incurring the over \$1,000.00 payment to join Defendants' membership association.
- (F) Failing to clearly and conspicuously disclose in their actual advertisements all conditions, restrictions and limitations associated with obtaining the credit card, including but not limited to:
 - (i) required income level;
 - (ii) Requirement to prove employment;
 - (iii) no Chapter 13 bankruptcy filings;
 - (iv) attendance at a sales presentation and its duration; and
 - (v) payment of a large fee to open Defendants association for a 3 year period.
- (G) Encouraging employees to lie, misrepresent or mislead consumers in order to secure their attendance at Defendants' sales presentation;
- (H) Encouraging and affirmatively instructing employees to falsify earnings or other information in order to secure credit for consumers.
- (I) Concealing from consumers the fact that Defendants will not deliver the promised credit re-

establishment services and ensuring that they will not be aware of this fact during the time period in which a consumer could cancel their agreement with Defendants under the 72 hour cancellation provision required by the Tennessee Credit Business Services Act.

(J) Misrepresenting that Defendants' sales persons have had their credit "re-established" by participating in Defendants' association.

(K) By making "free" or similar offers without setting forth clearly and conspicuously at the outset of those offers all the terms, conditions and obligations upon which receipt and retention of the free items are contingent in violation of 16 C.F.R. § 251.1(c).

(L) By utilizing false testimonials in promoting this credit re-establishment scheme without disclosing that the success claimed is unusual or the results extraordinary when the person did not participate in the program, in violation of 16 C.F.R. § 255.2(a).

34. The Defendants have violated Tenn. Code Ann. § 47-18-104(b)(5) which prohibits "representing that goods or services have sponsorship, approval, characteristics ... uses, benefits, ... that they do not have" by engaging in for example the following conduct:

(A) Representing that consumers will receive goods or services that they do not receive;

(B) Representing that consumers will receive an "unsecured credit card" with a \$2,500.00 credit limit when in fact they are only offered a credit card with a lower credit limit;

(C) Representing that a consumer's credit will be "re-established", when such is not the case;

(D) Representing to Defendants' employees that the telemarketing script used by Defendants has been approved, reviewed or consented to by the Attorney General's Office, when such is not the case.

35. By representing that Defendants' goods or services are of a particular standard, grade or quality when they are not, the Defendants have violated Tenn. Code Ann. § 47-18-104(b)(7) which prohibits "representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another".

36. By advertising certain goods or services and not providing those goods or services as advertised, the Defendants have violated Tenn. Code Ann. § 47-18-104(b)(9) which prohibits "advertising goods or services with intent not to sell them as advertised".

37. By misrepresenting that consumers will receive certain goods or services in the consumer transaction

when such is not the case, the Defendants have, directly or indirectly, represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §47-18-104(b)(12).

38. By offering "free" goods or services with the purchase of a "membership" to the "association" without clearly and conspicuously, identifying and disclosing the verifiable retail value of those goods or services, Defendants are in violation of Tenn. Code Ann. § 47-18-120(C)(I)(D).

39. By offering "free" goods or services but requiring that consumers incur the monetary obligation of purchasing a "membership" in the "association", Defendants are in violation of Tenn. Code Ann. § 47-18-120(C)(I)(C), 47-18-104(b)(27), and the Federal Trade Commission's Guide on the use of the word "free", 16 C.F.R.251.1(c).

40. By offering "free" goods or services but not clearly and conspicuously disclosing all monetary obligations, restrictions and conditions associated with receiving the "free" goods or services, Defendants are in violation of Tenn. Code Ann. §47-18-120 (C)(I)(H).

41. Defendants have failed to continuously maintain the bond required by law in violation of Tenn. Code Ann. § 47-18-1011.

42. Defendants' acts and practices described herein violate Tenn. Code Ann. § 47-18-1003 (1) which prohibits a credit service business from charging or receiving "any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform."

43. Defendants' acts and practices described herein violate Tenn. Code Ann. 47-18-1003(2) which prohibits the "charg(ing) or receiv(ing)" of "any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend credit to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public".

44. Defendants' acts and practices described herein violate Tenn. Code Ann. § 47-18-1003(4) which prohibits the making or use of "any untrue misleading representations in the offer or sale of the services of a credit business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person n connection with the offer or sale of the services of a credit services business."

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-

- (2) That process issue and be served upon Defendants pursuant to Tenn. Code Ann. § 20-2-201, requiring them to appear and answer this Complaint.
- (3) That this Honorable Court adjudge and decree that Defendants have engaged in acts or practices in violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*, as previously set forth.
- (4) That this Honorable Court adjudge and decree that Defendants have engaged in acts or practices in violation of the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001, *et seq.*, as previously set forth. (5) That this Court temporarily and permanently enjoin Defendants from engaging in deceptive and unfair practices set forth herein and from violating the Tennessee Consumer Protection Act of 1977 and the Tennessee Credit Services Business Act.
- (6) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person, any ascertainable losses (including statutory interest) suffered by reasons of the Defendants' violations of the Tennessee Consumer Protection Act and the Tennessee Credit Services Business Act. Specifically, the State requests that this Court order that all "membership association" agreements be declared unenforceable and void pursuant to Tenn. Code Ann. § 47-18-1007(b). Thus, Defendants and their agents, including but not limited to any collection agency should be prohibited by this Court from continuing collection efforts on these void agreements. Additionally, Plaintiff asks that this Court order that the Defendants' current bond be transferred to the Court to hold to provide for restitution to consumers.
- (7) That the Court adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, as is provided by Tenn. Code Ann. § 47-18-108(b).
- (8) That the Court adjudge and decree that the Defendants pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).
- (9) That all costs in this cause be taxed against Defendants.
- (10) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.